

Estate of Eliza Shield Him

IBIA 71-7

Decided March 24, 1971

Syllabus

Indian Probate: Reopening: Generally

A petition for reopening must comply in form and substance to the requirements of § 15.18 of 25 C.F.R.

Indian Probate: Reopening: Generally

When a petition for reopening is filed with the Examiner more than three years after the entry of the final decision in a probate, the petition is properly referred to the Board of Indian Appeals for disposition.

Indian Probate: Reopening: Waiver of time limitation

The Board of Indian Appeals, acting under delegated authority from the Secretary will not exercise discretion retained by the Secretary to waive time limitations without proper showing of merit in the petition.

Indian Probate: Appeal: Dismissal

An imperfect appeal will be dismissed with prejudice upon appellant's petition to withdraw the petition.

ESTATE OF ELIZA (MILLIE) SHIELD HIM	:	Appeal Dismissed
	:	IBIA 71-7
Deceased	:	
Rosebud Allottee No. 3878	:	March 24, 1971
Probate No. 7732-52, B-76-52	:	

This matter comes on for consideration upon a letter from Mr. William Benjamin of the Rosebud, South Dakota Legal Services dated February 22, 1971 received at the headquarters of the Board March 1, 1971. He expresses the desire of the appellant to withdraw the petition for reopening and the appeal from the Examiner's order denying the same. This letter, like the petition before it, is an unsworn document, a copy of which is attached hereto as an appendix.

Further, there was a complete failure on the part of the appellant to comply with the requirements of the interim order and notice of docketing issued January 22, 1971. The appellant was required to file an amended petition at the headquarters of the Board on or before the close of business on February 26, 1971. A required revised petition was not timely filed, and it should be dismissed with prejudice for that reason alone.

In the order of January 22, 1971 the Board affirmed the Examiner's order staying distribution until further order, and such stay should now be terminated.

The petition for reopening in this case was properly referred by the Examiner to the Board. This is not a proper case for the exercise of the discretion retained by the Secretary in § 1.2 of 25 C.F.R.

The petition for reopening is denied, with prejudice. The stay of distribution is hereby terminated. The Examiner is directed to authorize the Superintendent to resume distribution of the income of the estate under the order entered in probate No. 7732-52.

Under authority delegated to the Board of Indian Appeals by the Secretary of the Interior it is determined that this matter has been properly conducted, decided, and reviewed. This decision is final for the Department. 35 F.R. 12081.

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David J. McKee, Chairman  
Board of Indian Appeals

Concur:

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David Doane  
Alternate Board Member

APPENDIX  
IBIA 71-7

Legal Services  
Box 227  
Rosebud, South Dakota 57570

February 22, 1971

U. S. Department of Interior  
Office of Hearing and Appeals  
Interior Board of Indian Appeals  
4015 Wilson Boulevard  
Arlington, Virginia 22203

Re: Estate of Eliza Shield Him  
IBIA 71-7

Dear Sirs:

Further study and investigation by me since receiving your Notice of Docketing and Interim Order in the above-named matter reveals that all possible grounds for reopening the Estate of Eliza Shield Him are insubstantial and untenable and I have so advised my client.

I regret the inconvenience that this may have caused you.

Sincerely,

William Benjamin